

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY CARTER,

Defendant-Appellant.

UNPUBLISHED

March 1, 2005

No. 250937

Wayne Circuit Court

LC No. 03-005022-01

Before: Talbot, P.J., Whitbeck, C.J., and Jansen, J.

PER CURIAM.

Defendant Timothy Carter appeals as of right his jury conviction for possession with intent to deliver between 450 and 1000 grams of cocaine¹ and possession with intent to deliver marijuana.² We affirm. We decide this case without oral argument pursuant MCR 7.214(E)(1).

I. Basic Facts And Procedural History

This case arose from a police search of a house at 16610 Tracey in Detroit. According to police testimony at trial, Officer Tyrone Gray conducted surveillance on the house and saw several people, including Carter, engage in a number of suspected narcotics transactions. Officer Gray requested and obtained a search warrant. On April 9, 2003, Sergeant Jeffrey Clyburn, the officer in charge of the search, conducted surveillance on the house for about two hours before the search and observed a number of suspected narcotics transactions.

Several officers participated in the search. Officer Gray found cocaine and marijuana on one of the men outside the house. Meanwhile, Officer Vincent Crockett entered the house and saw Carter drop a bag at the top of the stairs. Officer Crockett told Officer Brian Glover about the bag. Officer Glover retrieved the bag that Carter dropped and also searched the bedroom where Carter was arrested, where he found six bags of suspected cocaine and two bags of suspected marijuana. Officer Jessica Jones seized several bills that had Carter's name on them and listed 16610 Tracey as his address. Sergeant Clyburn found a scale in the kitchen that he

¹ MCL 333.7401(2)(a)(ii).

² MCL 333.7401(2)(d)(iii).

knew from experience was the type of scale that is used to weigh narcotics. Sergeant Clyburn also found \$1,540 in currency on Carter's person. After being advised of his rights, Carter admitted to Officer Crockett that he lived in the house, that he sold marijuana, and that he had previously sold crack; however, Carter denied currently selling cocaine.

At trial, Carter testified that several other men lived with him at 16610 Tracey, that he did not sell drugs from the house, and that he did not drop a bag of narcotics when confronted by the police. Carter admitted to possessing and selling marijuana, but stated that the cocaine belonged to his uncle, not to him. The jury convicted Carter as charged.

II. Evidence Of Possession

A. Standard Of Review

Carter argues that there was insufficient evidence of possession to support his conviction on the cocaine charge. In determining whether sufficient evidence has been presented to sustain a conviction, a reviewing court must view the evidence in a light most favorable to the prosecution and determine whether any rational finder of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.³ The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict.⁴

B. The Evidence

We conclude that, viewed in a light most favorable to the prosecution, there was sufficient evidence to show that Carter possessed the cocaine. The police found the cocaine in the bedroom where they arrested Carter. Carter's proximity to the cocaine shows that he had dominion and control over the substance sufficient to establish at least constructive possession.⁵ A jury could reasonably infer from the evidence presented that Carter possessed the cocaine.⁶

III. Jury Instructions

A. Standard Of Review

Carter argues that the trial court failed to give the necessary specific intent instruction for aiding and abetting. Carter did not object to the instruction given; therefore, we review this unpreserved issue for plain error.⁷

³ *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

⁴ *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

⁵ *People v Konrad*, 449 Mich 263, 272-274; 536 NW2d 517 (1995).

⁶ *People v Fetterly*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998).

⁷ *People v McCrady*, 244 Mich App 27, 30; 624 NW2d 761 (2000).

B. The Instruction For Aiding And Abetting

The trial court instructed the jury that Carter must have intended the commission of the crime alleged. The trial court gave specific intent instructions on the principal charges. Although the trial court did not reinstruct the jury as to specific intent in the aiding and abetting instruction, it told the jury that aiding and abetting required the same intent as the principal offense. Because these instructions fairly presented the issues and sufficiently protected Carter's rights, we conclude that plain error affecting substantial rights did not occur.⁸

Affirmed.

/s/ Michael J. Talbot
/s/ William C. Whitbeck
/s/ Kathleen Jansen

⁸ *Id.*